

**MINUTES OF THE APRIL 8, 2013, MEETING
OF THE COMMITTEE OF THE WHOLE
OF THE GOVERNING BOARD OF THE
ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY**

The Board of Directors (“Board”) of the Illinois Health Information Exchange Authority (“Authority”), pursuant to notice duly given, held a meeting at 1:00 p.m. on April 8, 2013, at the State of Illinois James R. Thompson Center, 100 W. Randolph Street, Chicago, IL 60601, with telephone conference call capability.

| | |
|---|---|
| <u>Appointed Members Present:</u> 1. Dr. Bechara Choucair 2. Mr. David Holland 3. Dr. William Kobler 4. Dr. Nancy Newby 5. Dr. Nicholas Panomitos 6. Mr. Raul Recarey 7. Dr. Bruce Wellman 8. Dr. Cheryl Whitaker | <u>Ex-Officio Members Present:</u> 1. DOI – Ms. Colleen Burns 2. DPH – Mr. David Carvalho 3. OOG – Ms. Laura Zaremba 4. DHS – Sharon Dyer-Nelson (by telephone) |
| <u>Appointed Members Absent:</u> 1. Mr. Mark Neaman | <u>Ex-Officio Members Absent:</u> 1. HFS – Director Julie Hamos |
| <u>OHIT Staff Present:</u> Sonia Desai Bhagwakar (by phone), Mark Chudzinski; Jeremy Kohn; Pamela Parker; Sanjay Patel | |

Call to Order and Roll Call

Dr. Cheryl Whitaker, Chair of the Board of Directors of the Authority, called the meeting to order at 1:07 p.m. Mr. Mark Chudzinski, Secretary to the Board, confirmed the presence of the Members of the Authority Board and others present in person and by telephone, and the ability of those participating by phone to hear clearly and participate. There were no objections expressed to the participation of Directors by electronic means.

Legislative Update on Proposed Amendments to the MHDDCA

Mr. Mark Chudzinski, General Counsel of OHIT, provided an overview of HB1017. The bill was passed unanimously by the House Judiciary Committee on February 27 (15-0), and by the Illinois House on March 8 (115-0), and has now been sent to the Illinois Senate for consideration.

The bill amends the Illinois Mental Health Confidentiality Act to create an “HIE exception” allowing the electronic transfer of patient mental health records to an HIE without prior patient consent. Patients would need to be given a “reasonable opportunity” to “opt-out” from further disclosure of their record by an HIE. The bill also delegates responsibility for more detailed

implementation of patient opt-out rules to the ILHIE Authority, and this rulemaking would require a formal process including public notice and opportunity for comment.

HB1017 has received the endorsement of ten stakeholder healthcare organizations involved with mental health services. However, it has also been opposed by several organizations with concerns regarding the consent policies and operational details. Some groups believe that the consent policy should be “opt-in” rather than “opt-out;” or that the statute should specify more details of the “meaningful disclosure” that patients receive before deciding whether to opt out; or that the ability to opt out should be “granular,” allowing patients to disclose only certain elements of their medical record, to certain providers, or regarding certain encounters.

To help address some of these concerns, HB1017 was amended (once in the House Judiciary Committee, and again on the House floor). The amendments (1) allow patients to revoke prior decisions to opt out or not to opt out, (2) require that patients receive written notice of their right to opt out, directing the patients to a website which includes an explanation of the HIE and instructions for opting out, and (3) require that the rules, standards, and technical obligations written by the Authority to implement the opt-out policy be reviewed annually and updated as the technical options develop.

Following the passage of HB1017 in the House, concerns were raised by some regional HIEs or health information organizations (RHIOs) regarding exactly which entities would be classified as “health information exchanges” and so enjoy the benefits of the HIE exception. “Health information exchange” or “HIE” is not currently defined in state or federal law. The proposed definition in HB1017 includes the state-level ILHIE, as well as any health information organization which the ILHIE Authority “approves or certifies.” However, the RHIOs are concerned that approving or certifying HIEs case-by-case would require a lengthy and subjective agency rulemaking process. Possible solutions include giving HIE status immediately to identified qualifying entities, or specifying with greater clarity the criteria that the Authority would use to approve HIEs.

One final concern is that the business details of RHIO engagement with the ILHIE (e.g. fees) are unresolved. For example, if there is overlap between the services provided by the RHIOs and those provided by ILHIE, then hospitals and other providers may not want to pay twice for duplicative services. Mr. Raul Recarey, ILHIE Executive Director, plans to present to the RHIOs that it is not the intention of the state-level ILHIE to price itself in a way to discourage providers from joining the RHIOs. However, the ILHIE has a mandate to be the provider of last resort to anyone in the state, including providers in the “white spaces” not covered by any of the RHIOs.

The immediate next steps for the Authority are to support the consideration of HB1017 in the Senate and to further address the stakeholders’ concerns. If HB1017 passes, it would require the ILHIE Authority to engage in rulemaking regarding approval or certification of HIEs, and regarding the form and content of patient “opt-out” rights. Contemporaneously, the OHIT staff would explore the prospects for HIE legislation regarding other sensitive patient data (HIV/AIDS, genetic testing, and substance abuse) as well as legislation to create a “break-the-glass” exception allowing disclosure of information for emergency treatment.

Preview of Board Meeting

Dr. Whitaker mentioned several items to be discussed at the meeting of the ILHIE Authority Board later that afternoon. Rather than action items, the planned board meeting agenda included informational items including reports from Board committees. For example, the Governance and Nominating Committee had met the previous week to consider a slate of officers, and a vote on approving the officers is planned for the Board meeting on May 15.

Adjournment

The meeting was adjourned at 2:24 p.m.

Minutes submitted by Jeremy Kohn, OHIT Legal Intern